

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref:08od-068

Oahu

Grant of Term, Non-Exclusive Easement to TLM Partners LTD
for Seawall, Lanai and Landscaping Purposes, Niu, Honolulu,
Oahu, Tax Map Key: 3-7-02: 09 seaward.

APPLICANT:

TLM Partners LTD, whose mailing address is 1568 Calzada Avenue,
Santa Ynez, California 93460.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honolulu located seaward of Tax
Map Key: 3-7-02: 09, Niu, Honolulu, Oahu, as shown on the
attached map labeled Exhibit A.

AREA:

2,195 square feet, more or less, to be determined by DAGS Survey
Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use and occupy the subject area for the purpose of using, maintaining, repairing, replacing and removing existing seawall, lanai and landscaping area purposes, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff cited evidence that the subject seawall is contiguous with the neighbors' walls on either side, which were in existence before 1964, and is considered a pre-existing use prior to the enactment of Chapter 343. Inasmuch as this action contemplates the use and maintenance of pre-existing structures or features on State lands, this action is exempt from the provisions of chapter 343, HRS, as amended, pursuant to Exemption class #1 of the Approved EIS Exemption List for the Division dated April 28, 1986.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey map and description according to State DAGS standards and at Applicant's own cost (previously submitted).

REMARKS:

The applicant is planning to do some reconstruction on the property. Part of the building permit process triggers a shoreline certification process. The survey map reveals an encroachment of the seawall, portion of the dwelling's tile lanai and a landscaped

area with a total area of about 2,195 square feet (see Exhibit B-1 & B-2).

The Office of Conservation and Coastal Lands (OCCL) staff has determined that the issuance of an easement for the encroachments would have no adverse impacts on natural resources, including beach resources and therefore has no objections to the issuance of an easement (see OCCL letter, Exhibit C).

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff also recommends imposing a \$500 fine, pursuant to Section 171-6(12)HRS, for the encroachment constructed without prior authorization by the State.

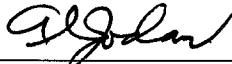
A request for comments was made to various agencies. The Department of Hawaiian Home Lands, Department of Land and Natural Resources, Water Resource Management Division and the Board of Water Supply had no objections or no comments. The Office of Hawaiian Affairs provided comments regarding the \$500 fine and the 55-year term easement (see Exhibit D). Staff notes that the 55-year term easement is a standard condition that has been approved for earlier seawall easements with similar issues while the \$500 fine is what the Board had consistently imposed in these cases.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-7-02:09, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to TLM Partners LTD, covering the subject area for seawall, lanai and landscaping area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

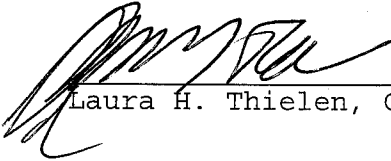
- B. Review and approval by the Department of the Attorney General;
- C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3-7-02:09, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



Al Jodar
Land agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



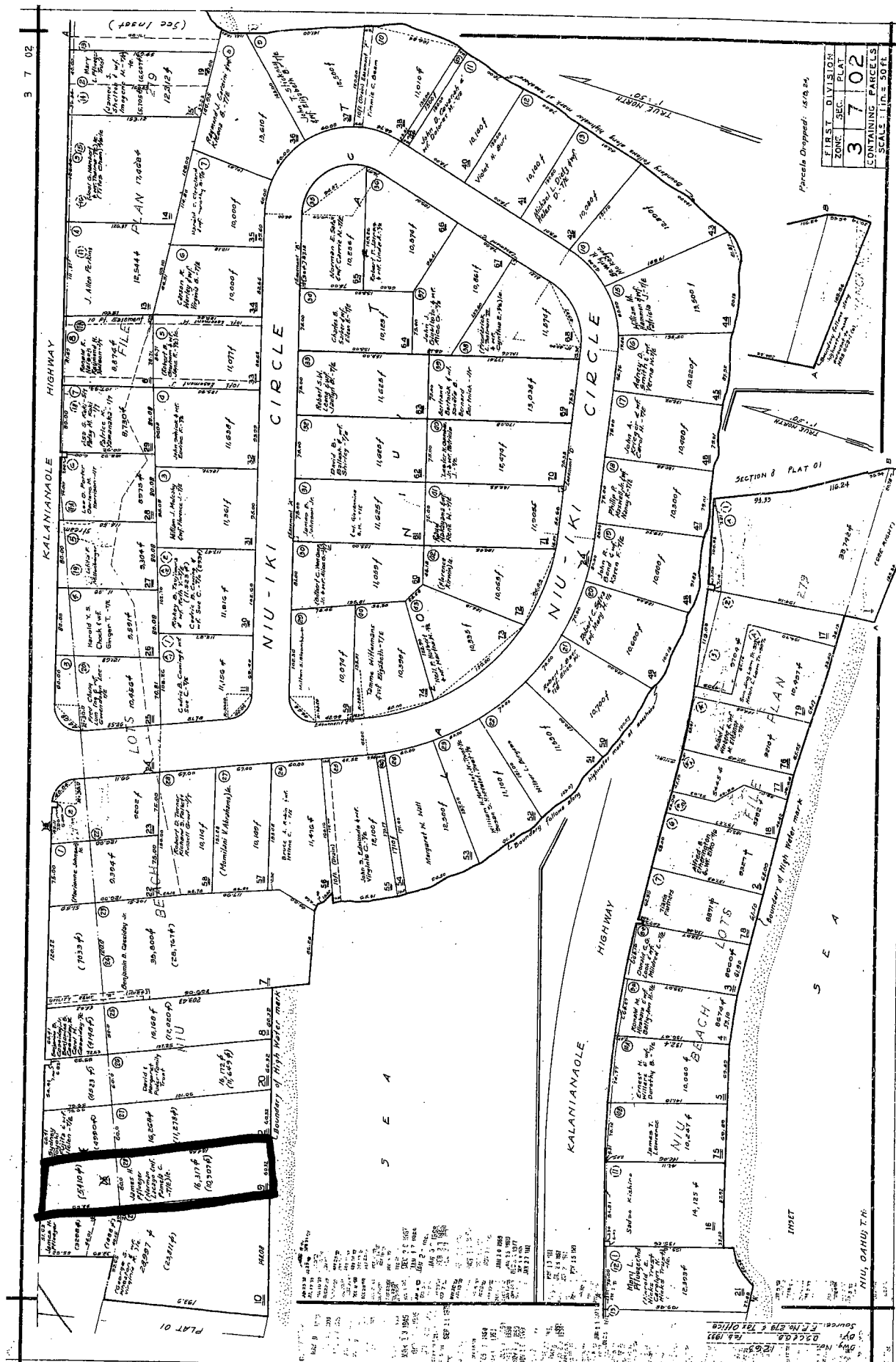
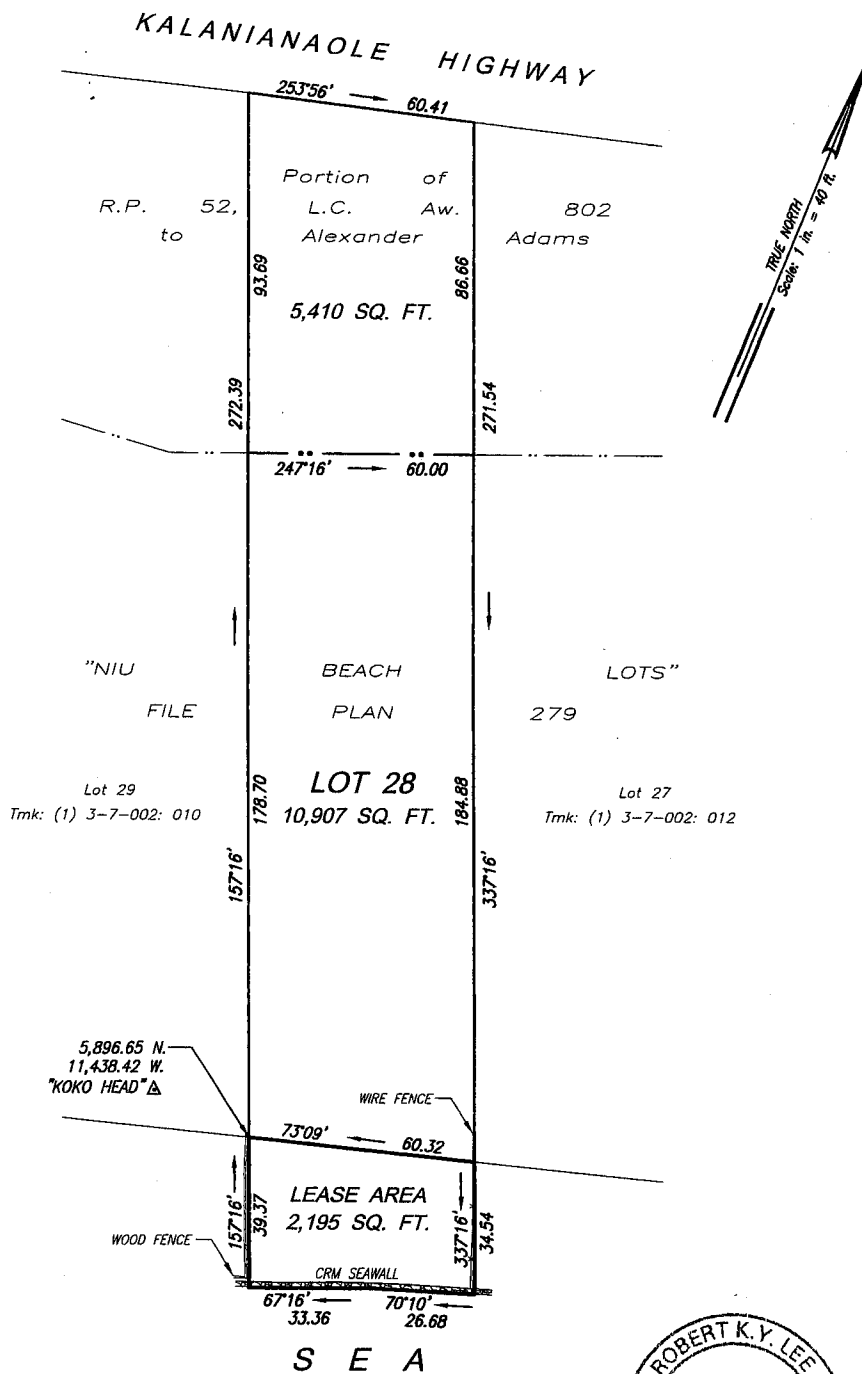


EXHIBIT "A"

JH_C:\SURVEY CAD FILES\2008\4611\DWG\4611_LOT28_EASE.DWG

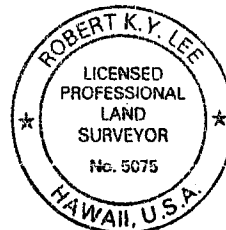


PLAN SHOWING LEASE AREA
FRONTING LOT 28 OF "NIU BEACH LOTS"
AS SHOWN ON FILE PLAN 279

AT NIU, HONOLULU, OAHU, HAWAII

TAX MAP KEY: (1) 3-7-002: 009

OWNER: TLM PARTNERS LTD.
ADDRESS: 5677 KALANIANA'OLE HIGHWAY
Honolulu, Hawaii 96821



This work was prepared by me
or under my direct supervision.

Robert K.Y. Lee

Robert K.Y. Lee
Licensed Professional Land Surveyor
Certificate Number 5075

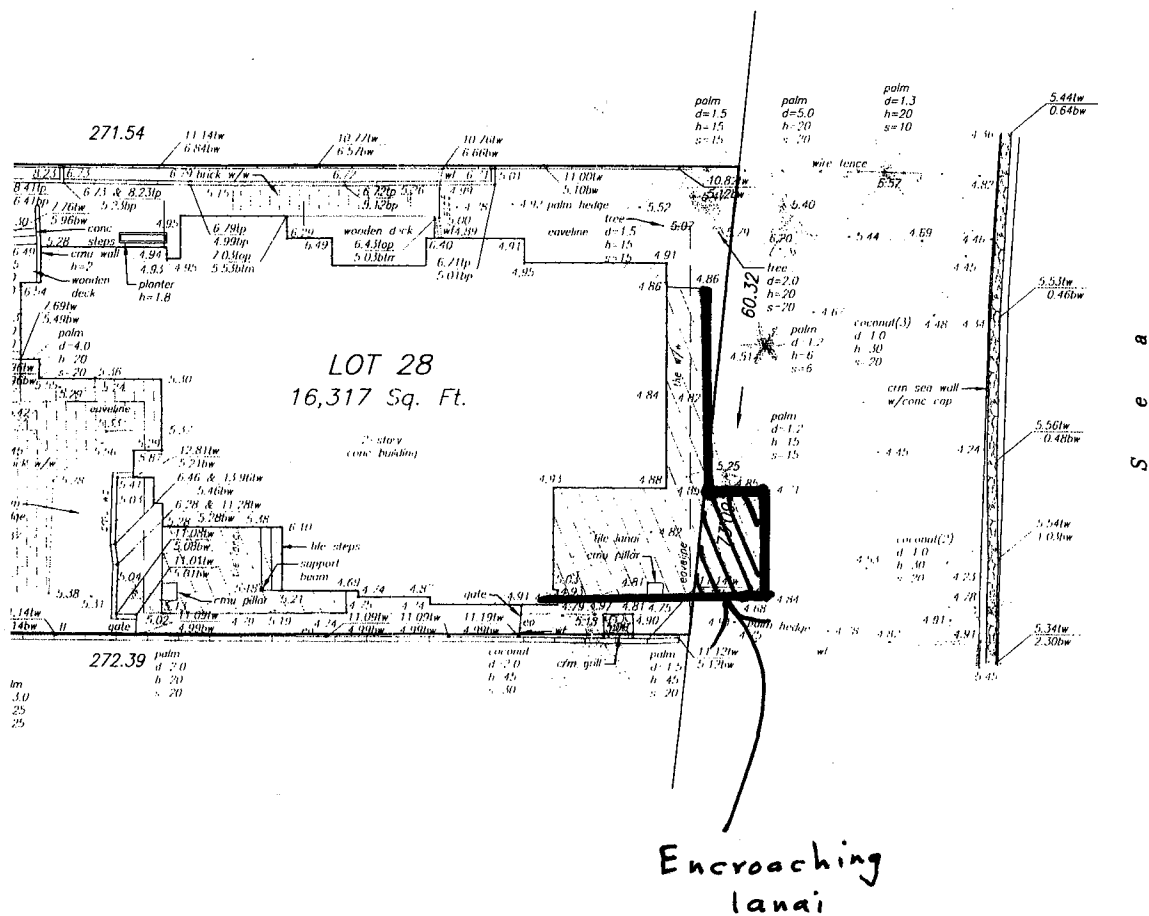
APRIL 30, 2008

JOB NO.: 4611
FB. NO.: 1789
8.5" X 14" = 0.8 Sq. Ft.

TOWILL SHIGEOKA & ASSOCIATES, INC.
LAND SURVEYORS

2153 N. KING STREET
SUITE 308
HONOLULU, HAWAII 96819

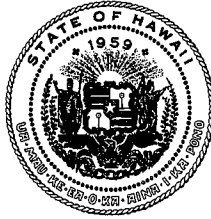
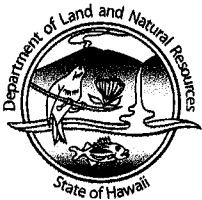
EXHIBIT "B" - 1



TOWILL, SHIGEOKA & ASSOCIATES, INC.

Robert Ky Lee
Licensed Professional Land Surveyor
Certificate Number 5075

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:CC

File Number Encroachment: DA-08-010

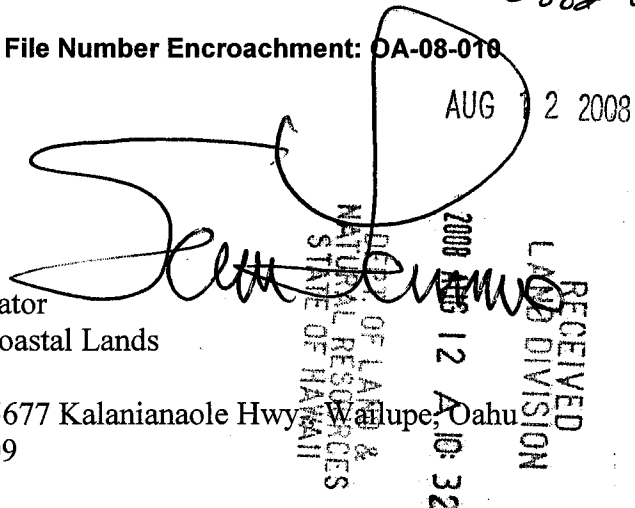
08-068

MEMORANDUM:

TO: Al Jodar, Land Agent, Oahu
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Shoreline Encroachments at 5677 Kalaniana'ole Hwy, Wailupe, Oahu
Tax Map Key: (1) 3-7-002:009



The Office of Conservation and Coastal Lands (OCCL) has reviewed the June 06, 2008 memo from Land Division, including the Shoreline Encroachment Information Sheet provided by the applicant, Mr. Donald Clegg.

According to information, photographs, and maps, it appears as though the encroachments are nonconforming. The encroachments include 2195 square feet of state land with a tile lanai on the mauka side and a seawall on the makai side.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

EXHIBIT "C"

There is no existing beach resource makai of the shoreline structure. Though the 1954 aerial photograph shows a small beach fronting the shoreline structure, it had disappeared by the 1961 aerial photograph.

Public Access:

This section of coastline has limited public access. There are no local shoreline accesses and no local public parking.

Effect of Removing the Encroachment on:

Beach Resources: It is unknown if removal of the seawall would positively impact the beach resource, as the substrate mauka of the seawall is unknown. Though seawalls on either side will limit the potential formation of beach, a small pocket beach has the potential to form with input from the eroded coastal plain and the adjacent stream mouth clearing activities.

Public Access: OCCL staff has determined that public access will not be enhanced by removal of the seawall and tile lanai.

Affect on Adjacent Properties: Removal of the seawall may have a negative effect on neighboring shoreline armoring structures and might lead to their consequent destabilization. Consideration should be given to these potential impacts if the seawall is removed.

Affect on Upland Development: Removal of the seawall will cause erosion of the coastal plain. As the residence is more than 30 feet mauka of the seawall, it is uncertain whether removal of the seawall will create an emergency situation from the erosion.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for both of the encroachments and the 2195 square feet of State land. The OCCL suggests that proper signage be placed identifying that the seawall, State land, and portion of the tile lanai on State land are open to the public.

Please feel free to contact Chris Conger, Sea Grant Extension Agent at the Office of Conservation and Coastal Lands at 587-0049.

CC: Office of Hawaiian Affairs, Grant Arnold

PHONE (808) 594-1888



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

RECEIVED
LAND DIVISION

FAX (808) 594-1865

2008 SEP -3 A 10:51

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

HRD08/3791

August 29, 2008

Al Jodar
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawai'i 96809

Re: Request for comments on the proposed 55-year term easement for seawall and landscaping on state lands, Niu, O'ahu, TMK: 3-7-02:09 seaward.

Aloha e Al Jodar,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated August 14, 2008. OHA has reviewed the project and offers the following comments.

OHA understands that a shoreline certification process revealed an encroachment on the subject property due to a seawall, landscaping area and a portion of the dwelling itself. OHA sees that staff recommendation to the board is to authorize the issuance of a term non-exclusive easement for the encroachment in addition to imposing a \$500 fine.

OHA notes that page two of the August 12, 2008 memorandum from Samuel Lemmo to Al Jodar states that a 1954 aerial photograph shows a small beach fronting the property, which is no longer there. OHA asks if the 1954 or 1961 photographs show the seawall or encroaching structures. We understand that not only did a beach used to be exist, but from the Office of Conservation and Coastal Lands memorandum we see that "a small pocket beach has the potential to form" if the seawall were removed.

While OHA is not suggesting that the seawall be removed in this case, we are inquiring if the loss of this beach can be attributed to what the Board of Land and Natural Resources may authorize in this action. If such a link can be made, perhaps a \$500 fine is too lenient.

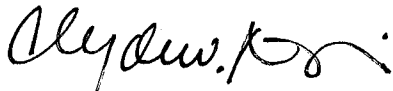
EXHIBIT "D"

We also suggest that the 55-year lease now proposed may be too long. OHA notes that federal and state agencies are preparing for the advent of sea level rise. For example, the Coastal Zone Management Act at 16 USC §1451 (l) states, "Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence." Therefore, a shorter lease term may allow future boards and decision-makers more flexibility in dealing with the unfortunates that this issue will present for us in the near future.

Further, OHA notes that the subject land is designated as Section 5(b) Ceded Lands, which hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. These lands were illegally taken from the Hawaiian Kingdom after the 1893 overthrow and later transferred ("ceded") by the United States government to the State of Hawai'i upon statehood. Today, the state holds the Ceded Lands corpus in trust for Native Hawaiians and the general public. OHA is supposed to receive a portion of all revenues generated on these lands.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o
Administrator

ESMOT